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South Carolina House of Representatives

# Legislative Update

David H. Wilkins, Speaker of the House

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## CONTENTS

|                                     |    |
|-------------------------------------|----|
| Week in Review .....                | 02 |
| House Committee Action .....        | 08 |
| Bills Introduced in the House ..... | 14 |

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## WEEK IN REVIEW

### HOUSE

The House debated, amended, and sent to the Senate H.4360, the "Sexually Violent Predator Act." The bill establishes procedures for determining if a person is a sexually violent predator, and provides for a civil commitment procedure for the long-term care and treatment of a person found to be a sexually violent predator. The House amended the definition of "sexually violent predator" to state a person must be convicted of (instead of charged with) a sexually violent offense. The amendment also defines the phrase "likely to engage in acts of sexual violence" and adds language to the notice sections to make clear that the notice requirements are not jurisdictional. The amendment also requires that demand for a jury trial must be made within 30 days after a determination that probable cause exists that a person is a sexually violent predator. If such a demand is made, then the court must schedule a trial before a jury for the next available date for jury court in that county.

On Wednesday, March 18, the House held a ceremony to unveil portraits of The Honorable Samuel J. Lee and The Honorable Robert Brown Elliott, the only two African-Americans to have served as Speaker of the South Carolina House of Representatives. The portraits, painted by acclaimed South Carolina artist Larry Francis Lebby, will be hung in the House Chamber upon completion of the current State House renovations.

The House amended and returned to the Senate S.535 which provides for privacy of genetic Information with regard to insurance coverage. This bill prohibits insurers from denying or restricting coverage on an individual on the basis of information obtained in genetic tests. An accident or health insurer may not require a person to consent to disclosure of genetic information as a condition for obtaining accident and health insurance. Under the legislation, it is unlawful to perform a genetic test on blood, urine, or any other biological sample without consent, unless the test is performed: by a law enforcement agency in a criminal investigation; to identify a dead body; in the course of a scientific study where the identities of test subjects are not disclosed; to establish paternity; or pursuant to statute or specific court order. Under the legislation, all genetic information is confidential, and such information may be released only: if the information is necessary to a criminal investigation, inquest, or proceeding; to identify a dead body; pursuant to a court order; when disclosure of the genetic information of a deceased individual would assist medical diagnosis of blood relatives; to establish paternity; or as required by state or federal statute. Civil remedies are provided for individuals harmed by unauthorized disclosure of genetic information.

The House amended and sent to the Senate H.3833, which concerns the liens which Medicaid has on any recovery by a Medicaid recipient in lawsuits for injuries suffered by the recipient. As amended, the bill states that a recipient who is pursuing recovery from a third party may present evidence of the greater of the Medicaid claim amount or the billed amount of those services before the Medicaid discount to determine the value of medical services. The amended bill also mandates the Department of Health and Human Services (DHHS), when



### Legislative Update, March 24, 1998

enforcing its assignment or subrogation rights, to reduce any amount due to the department by the percent agreed upon by the applicant or recipient and his attorney as attorney fees. The agreed upon percent reduction may not exceed 33 1/3% (however, in complicated litigation that proceeds to trial the recipient may petition the court to go over this cap). The percent reduction is 25% if no percentage attorney fee is agreed upon between the applicant or recipient and the attorney. The bill also requires DHHS to notify the recipient in writing that his attorney must contact the department by certified mail within 30 days of his representation. Failure to notify DHHS of the attorney's representation may lead to DHHS choosing the attorney to pursue the claim. Furthermore, the amended bill states that, upon written request by the attorney for the applicant or recipient, DHHS must provide written information regarding the Medicaid claim, including the outstanding amount of the claim at the time of the department's response. The department must provide its response within 10 days of receiving the request if the first claim was submitted to the department within the last eighteen months and within forty-five days of receipt in all other cases. The attorney may rely on that information for a period of sixty days after receipt for purposes of negotiating a settlement or pursuing a verdict.

The House amended S.289 and returned the bill to the Senate. This legislation authorizes the Director of the Department of Corrections to establish a program involving the use of inmate labor by a nonprofit organization. Currently, inmate labor is used in private industry. The amended bill specifies that no violent offender may perform labor for nonprofit organizations if such labor is outside the confines of a correctional institution. Inmates participating in labor will not benefit in any manner contradictory to existing statutes.

The House amended and sent to the Senate H.3860 which requires that every application for a driver's license or permit must allow an applicant voluntarily to disclose a permanent medical condition, which must be indicated by a certain symbol on the driver's license. The House amended the bill by adding a requirement that these applications also allow an applicant voluntarily to disclose that he is an organ donor, which must be indicated by a certain symbol on the driver's license.

The House sent to the Senate H.4611. This legislation, concerning municipal elections only, would allow a municipality to pool one or more precincts with other precincts and have one voting place for all of these pooled precincts upon specified conditions. The bill stipulates that any precinct which contains 500 or more registered voters within the municipality must have its own voting place. In addition, the total number of registered voters within the municipality in each group of pooled precincts cannot exceed 1,500. The voting place of any precinct pooled with others cannot be more than three miles from the nearest part of any pooled precinct, and proper notice must be given of the change in the polling place.

The House amended and sent to the Senate H.4387 which requires the Department of Health and Environmental Control (DHEC) to establish and promulgate regulations for a comprehensive program to test all newborn babies in South Carolina for Human Immunodeficiency Virus (HIV). The Committee proposes an amendment that rewrites the bill. The amendment requires any health care professional who delivers infants or provides prenatal health care to counsel each pregnant woman when she first comes in for prenatal health care. The counseling must include information about HIV, the risk of transmission of the virus to the fetus, and treatment

available to prevent transmission. The woman must be offered the opportunity to be tested for HIV. A woman's consent or refusal to be tested must be documented. Any newly delivered baby whose mother's HIV status is not documented must immediately be tested to determine the HIV status of the baby. The amendment approved by the House requires that the HIV test results of the mother or baby be made a permanent part of the patient's medical record. It also includes a provision stating that no health care professional can be held liable for performing these required HIV tests or for the release of test information consistent with state law.

The House sent to the Senate H.4113 which provides that a South Carolina school district superintendent shall not receive a salary supplement, salary compensation, or valuable consideration exceeding two hundred dollars from any nongovernmental source, nor may the same be offered. The bill also provides that violation of this provision is a misdemeanor punishable by fine of not more than five thousand dollars or imprisonment for not more than one year, or both. The bill provides that such a salary supplement or compensation may be accepted only if approved by the local school district's school board and if the source of funding is an approved, appropriately registered educational foundation.

The House amended and gave third reading to H.3896 which amends state laws governing credit for reinsurance so as to adopt provisions from the 1996 Credit for Reinsurance Model Act formulated by the National Association of Insurance Companies. Among other things, the provisions of this legislation reassert that state law, not provisions of the U.S. Bankruptcy Code, governs with regard to compulsory security demanded of foreign reinsurers and claims against insolvent foreign insurers.

The House amended and sent to the Senate H.3897 which clarifies a reinsurer's responsibility in the event of an insurance company's insolvency. The bill eliminates existing ambiguity in current law and provides that a reinsurer need pay a specified type of claim only once.

The House amended and sent to the Senate H.3033 which establishes the Emergency Medical Services for Children program (EMSC) within the Department of Health and Environmental Control (DHEC). The EMSC program will establish EMS personnel education programs and guidelines for referral, treatment, inter-hospital transfer, and rehabilitation for critically ill or injured children. The bill also authorizes DHEC, in conjunction with the South Carolina Data Oversight Council, to collect and analyze children's EMS data and to do injury prevention and public education activities. In addition, the bill contains provisions requiring this data be handled in such a way that patient and care giver confidentiality is protected.

The House sent to the Senate H.4798 which grants the Adjutant General of South Carolina the authority, with the consent of the Senate, to order a member of the National Guard or State Guard to active duty for no more than 15 days. The Guard member must consent to the order. Pay for Guard members who are ordered to active duty must be available without additional state appropriations.

The House amended and sent to the Senate H.3758 which provides that, in filling a county veterans affairs position, first preference should be given to a qualified veteran. A qualified non-veteran should be given preference if a veteran under consideration is less qualified. H.3758 also requires all veterans affairs officers to successfully complete a comprehensive



Legislative Update, March 24, 1998

course of training and be issued accreditation within two years following initial appointment, either through the Division of Veterans' Affairs or through an accredited national veterans service organization. Refresher training is required annually to maintain accreditation. The House amended the bill to define a veteran.

The House amended and sent to the Senate H.4500 which codifies a previously uncodified act establishing the Williamsburg Technical, Vocational and Adult Education Center Commission, its composition, powers and responsibilities. The bill also changes the name of the governing bodies and updates other provisions relating to various other South Carolina technical colleges so as to reflect the revised names of the institutions administered by these boards. The House amended the bill by changing the name of the *Tech College of the Lowcountry* to the *Technical College of the Lowcountry*. The House also amended the bill by adding a section creating and assigning responsibilities and authority to the Aiken County Commission for Technical and Comprehensive Education.

The House amended and sent to the Senate H.4505 which concerns load length on certain pole trailers or pole carriers, includes flat-bed trailers within those vehicles which are exempt from limitations of vehicle length and load when transporting poles. The bill also adds iron and steel articles as materials which may be transported by these exempt vehicles. The House amended the bill to specify that between 2:00 a.m. and thirty minutes past sunset, the limitations regarding lengths of certain loads do not apply to loads up to sixty feet in length carried on a fifty-three foot long flat-bed trailer so long as: the vehicle is traveling upon or within five miles of the SC Truck Network as defined by regulation of the Department of Public Safety; the load does not extend more than three feet, six inches beyond the front of the bed of the trailer; the load does not extend more than four feet beyond the rear of the bed of the trailer; a flashing amber strobe light is attached to any overhanging rear load; and the vehicle's headlights, taillights, and any other exterior lights are on at all times while traveling upon the highways of this State.

The House amended Senate amendments to H.3764, which pertains to certified public accountants. The House amended the bill back to the House-approved version and returned the legislation to the Senate.

The House sent to the Senate H.4735 which revises the boundary line separating South Carolina and North Carolina.

The House amended and sent to the Senate H.4754 which provides for a permit which authorizes a food service establishment to purchase and sell nonnative farm-raised venison processed through an establishment certified by the State Livestock-Poultry Health Commission or the United States Department of Agriculture (USDA). The permit is free. A wholesale food distributor must also obtain a permit, at no cost, to buy and sell nonnative farm-raised venison to a permitted food establishment. The premises of such establishments must be open for inspection at reasonable hours. Penalties are provided for violations.

The House amended and sent to the Senate H.4693 which creates the Environmental Emergency Fund Act to fund exigencies that may require funds for certain activities that do not fall into any existing programs. Funds from the Environmental Emergency Fund must be



**Legislative Update, March 24, 1998**

financed from fines and penalties levied by the Department of Health and Environmental Control (DHEC), excluding any funds that are explicitly directed for distribution by another statute. The fund balance is limited to \$100,000. When the fund reaches the \$100,000 limit, subsequent fines and penalties must be deposited into the general fund for the State. The commissioner of DHEC must certify that expenditures from the fund for a specific emergency was necessary to protect the environment or public health. The House amends H.4693 to limit deposits to the fund to no more than \$100,000 in any fiscal year.

The House sent to the Senate H.4691, the South Carolina Rendering Act of 1998. Rendering is the processing of inedible parts of livestock or poultry carcasses and other raw material, and includes the collection and transporting of raw material for processing. The bill establishes standards for rendering operations, and provides for permits, inspections, and penalties for violations. The State Livestock-Poultry Health Commission is the governing and policy making body and is authorized to promulgate regulations necessary to carry out the Act. The director of the Division of Livestock-Poultry Health Programs at Clemson University administers and enforces the laws relating to rendering livestock, poultry, and raw material in South Carolina.

The House amended and sent to the Senate H.4690 which revises the laws governing Environmental Systems Operators to conform to the statutory framework for professional and occupational boards under the administration of the Department of Labor, Licensing and Regulation (LLR). The number of members (9) and duties of the Environmental Certification Board do not change. The bill clarifies language and updates disciplinary actions for complaints and noncompliance against a licensee. Currently, the Environmental Certification Board engages in memorandums of understanding with the Department of Health and Environmental Control to regulate pool and spa operators. This bill requires that pool and spa operators be certified annually by the Environmental Certification Board. The House amended H.4690 so as to set the levels of certification for water treatment plant operators, and mandates that all qualified applicants meet at least the minimum requirements for the level of certification being sought. An applicant's education may be considered by the Board in determining whether the applicant meets the experience requirements for certification. An application fee may be charged for each examination taken by an applicant. The amendment contains a grandfather clause which allows existing water treatment plant operators to hold their existing certification even if the plant changes its treatment process. The clause also allows operators working in water treatment facilities which do not change their treatment process but are reclassified to continue to operate those facilities without upgrading their certification.

The House approved H.4640. This joint resolution mandates that all compressed gas tanks and cylinders used to supply propellant for pesticides be equipped with properly functioning back flow prevention devices to prevent the entry of pesticide into the compressed tank or cylinder. Pesticide operations must cease before the tank or cylinder pressure falls below twice the system operating pressure, or 200 psi, whichever is greater. This resolution remains effective until the State Crop Pest Commission promulgates regulations addressing the matter.

The House sent to the Senate H.4618 which establishes the Voluntary Cleanup Program to return to use idled or under-used industrial facilities whose redevelopment is complicated because of contamination. A person who is responsible for the contamination at the site and is subject to a DHEC order or permit for assessment and re-mediation is not eligible to participate.



Any non-responsible party (including lenders and economic development agencies) demonstrating financial viability may contract with DHEC to clean up any contaminated site that is not on the National Priorities List for cleanup by the federal government. The contract includes a covenant not to sue the non-responsible party except for consequences that party causes. After signing a voluntary cleanup agreement, the contracting party must submit the appropriate work plans and reports to DHEC for approval. Before the contract is executed, DHEC may provide for public notice and a hearing on the proposed contract. Upon completion of the contract, the contracting party must submit a release to DHEC, who then issues the party a certificate of completion, and agrees not to sue the party for successfully complying with the terms of the contract. DHEC shall charge the responsible or non-responsible party for oversight costs associated with the Voluntary Cleanup Program.

The House sent to the Senate H.3901 which authorizes the Governor to execute an Interstate Dairy Compact with other states. The bill creates the Southern Dairy Compact Commission which is comprised of delegates from each state in the region. The Commissioner of Agriculture is the Compact administrator for South Carolina. All actions taken by the Commission must be by majority vote. The bill provides for the powers and duties of the Commission and allows the Commission to examine the books of any regulated person relating to his or her milk business. The Commission is also authorized to borrow money for start-up and regular costs. A negotiated compact shall be entered into force when enacted into law by any three of the following states: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. Any state is allowed to withdraw from the compact if that state gives a one year written notification of its intent to withdraw.

The House returned S.852 to the Senate with amendments. This bill creates the South Carolina Jocassee Gorges Trust Fund. The Jocassee Gorges consist of Lake Jocassee and other tracts of land owned by the Department of Natural Resources in Oconee and Pickens counties. Fund assets are derived from the proceeds of gifts, grants, and contributions to the State designated for the Fund. The income and principal accrued from investments of the fund will be used to support the operation, maintenance, and acquisition of land in the vicinity of Lake Jocassee. The Fund will be administered by the Board of Trustees for the Jocassee George Trust Fund, whose members are the chairman and members of the Board of the Department of Natural Resources. The State Treasurer is custodian of the fund. Any sale, trade, lease, or mortgage of Jocassee Gorges land must be approved by the General Assembly. The House amended S.852 to create an advisory committee to the Board of Trustees to make recommendations for expenditures from the fund. The advisory committee is comprised of nine members serving four year terms. Five members are appointed by the Governor, two appointed from the Senate by the Lieutenant Governor, and two are appointed from the House by the Speaker. The Governor appoints the committee chairman. The members of the advisory committee are not eligible for reimbursement for per diem, mileage, or subsistence.

The House returned S.275 to the Senate. This bill requires public or private animal shelters, animal refuges, or humane societies to have all dogs or cats sterilized before relinquishing custody of the animal. This provision would not apply to a privately owned animal which the agency has in its possession if the owner presents evidence that the animal is his property. All costs of sterilization would be the responsibility of the person acquiring the animal. A person

who acquires a dog or cat who fails to have the animal sterilized must forfeit ownership and pay the shelter, agency, society, or refuge where the dog or cat was obtained a sum of \$200.00.

## SENATE

After approval by the Senate, the following bills were enrolled for ratification: S.482, providing that assistant public defenders may reside outside the county in which they serve, and H.4039, which extends the authorized use of the Scenic Rivers Trust Fund to educational or planning projects associated with the management of the Scenic Rivers Program.

The following bills received third reading in the Senate and were sent to the House: S.1025, concerning the geographical placement of prisoners by the Department of Corrections; S.1115, which concerns funding for school districts which choose to reduce class size in full day kindergarten programs and in grades 1 through 3; S.974, concerning the witnesses permitted to view an execution; S.1058, which relates to scenic rivers; S.920, concerning the notation of organ donors on drivers' licenses; and S.921, which also concerns organ donations.

Also receiving third reading in the Senate were S.1079, which concerns insurance coverage for mastectomy surgery; S.982, which concerns security interests on motor vehicles; S.893, creating the Assistive Technology Warranty Act; S.936, concerning the practice of funeral service; S.1123, relating to the powers of the Adjutant General; and S.1127, concerning zoning activities (for a detailed summary of these bills, see the House Bills Introduced section of this update).

S.958 was amended on the Senate floor and sent to the House. This bill authorizes the investment of the funds of the state's various retirement systems in equity securities. The floor amendment concerns the equity investment plan for the state retirement systems which must be proposed annually by the State Budget and Control Board. The amendment requires the plan to include allocations of assets that provide diversification in accordance with prudent investment standards, including desired rates of return and acceptable levels of risk. The amendment would allow up to 40% of current member and employer contributions to the retirement system to be invested in equities. If the value of the equities increases enough to cause the investments to exceed 40% of the total assets of the retirement system, no sale is required to reduce the percentage of equities back to 40%.

## HOUSE COMMITTEE ACTION

### AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS

The full Agriculture, Natural Resources and Environmental Affairs Committee gave favorable reports to several bills this week.



H.4757 was given a favorable report. This bill authorizes the Department of Natural Resources (DNR) to establish temporary and permanent slow speed zones in South Carolina waters by designating the areas with regulatory markers. The bill also gives DNR the authority to temporarily close areas of state waters to recreational and commercial vehicles for ten days if DNR determines that flood conditions make operating such vehicles dangerous. The Governor may extend a temporary closure until flood conditions are no longer dangerous. The closure does not apply to law enforcement or medical personnel or to persons who own or lease property within the affected area.

H.4654 received a favorable report. This bill deletes the current provision of law which allows the Department of Natural Resources (DNR) to contract with enforcement officers. The bill also allows the director of DNR to remove an appointed officer at his discretion. Presently, only DNR's governing board is authorized to remove an appointed enforcement officer upon satisfactory proof that he is not fit for the position.

The Committee also passed out the following bills: H.4754, H.4693, H.4691, H.4690, H.4640, H.4618, H.3901, S.852, and S.275 which also passed the full House (see House Week In Review this issue).

## EDUCATION AND PUBLIC WORKS

The Education and Public Works Committee again adjourned debate on H.3305, which imposes a 25% surcharge on students who take more than 140 credit hours to complete a baccalaureate degree in a four-year program at any state-supported college or university in South Carolina, or more than 110% of the credit hours necessary to complete a baccalaureate degree in any program designated by the Commission on Higher Education as a five-year program at any state-supported college or university in South Carolina.

The Committee gave a favorable report with amendments to H.3453, which provides that school districts must develop alternative schools and at any time a student is expelled from school for more than one week, the student must be placed in a private or alternative school. The Committee struck all after the enacting language of the original bill and added comprehensive amendments which:

- 1) Require district school boards (beginning with school year 1998-99) to establish and to operate alternative school programs to meet the needs of students in grades 6-12 who have been suspended or expelled, who have a documented history of disruptive behavior or other behavior which interferes with the learning process and which requires attention which traditional programs cannot provide, or (upon approval of the local school board) who have been referred to such a program by court order;

- 2) Allow alternative school programs to be operated by districts individually or cooperatively with other districts; require that districts establish guidelines and procedures for

placement and attendance of students in alternative schools; require that when students are being considered for placement in an alternative school, districts also consider special education evaluation;

3) Require that alternative schools must develop a mission statement and must focus on the educational and behavioral needs of the students with a program which includes specialized components as well as the objectives of the adopted academic achievement standards in the core academic areas; allow alternative school programs, within specified requirements, to differ from traditional education programs and schools; provide procedures for alternative school students who enroll in another district before the expiration of the period of alternative school placement;

4) Require that districts establish procedures and offer staff training programs to ensure that alternative school teachers have the necessary skills to work with the needs of the alternative school students;

5) Require that a school district allocate to an alternative school program the same per student expenditure that would be allocated if the student were attending his or her regularly assigned school;

6) Allow specific alternative school program funds an Education Finance Act (EFA) weighting of 1.74, with the funds to be used for establishment, maintenance, and operation of the schools, and for staff development;

7) Require that the State Board of Education (SBE) promulgate regulations which include, but are not limited to annual program review and evaluation for establishment, maintenance, and operation of alternative school programs; require that the SBE provide, upon request of a district, material on developing an alternative school program

## JUDICIARY

The full Judiciary Committee amended and gave a favorable report to H.4378, the Magistrates Court Reform Act of 1998. This bill brings magistrates under the S.C. Court Administration as part of a unified court system. The bill requires magistrates to have a 2 year associate degree as of 5/1/2002 and a 4 year baccalaureate degree by 5/1/2006 (although a grandfathering provision exempts any magistrate serving on 7/1/98 from these provisions). The bill also requires magistrates to observe 10 trials before presiding over a trial. Magistrates would be paid by the state through the S.C. Court Administration, with three base categories for salaries, depending on the population of the county where the magistrate is located. Magistrates in counties of 150,000 or more would be paid 60% of a circuit court judge's salary; for counties between 50,000 and 149,000, magistrates would be paid half of a circuit judges salary; and for counties below 50,000, magistrates would be paid 40% of a circuit court judge's salary. Additionally, magistrates would not be paid 100% of the base salary until after 4 years in office. The committee amendment includes a provision requiring the S.C. Court Administration to review and approve the county's designation of full and part-time magistrates. Additionally,



a provision in the current law is retained that allows a part-time magistrate to be paid an hourly wage. The amendment also increases the civil action filing fee for actions where damages or the amount claimed exceeds \$1000 from \$25 to \$50, increases the fee for landlord-tenant cases from \$10 to \$40, and raises the costs charged by the court for writing bad checks from \$20 to \$40.

The full Judiciary Committee also approved H.4378, which allows retail dealers to sell or own containers with alcoholic liquors containing 100 milliliters (current law prohibits the sale or possession by a retail dealer of a container containing less than 200 milliliters).

H.4735, which revises the boundary markers for the border between North Carolina and South Carolina, also received a favorable recommendation by the committee.

### LABOR, COMMERCE AND INDUSTRY

The House Labor, Commerce and Industry Committee met on Tuesday March 17 and gave reports of favorable with amendments to three bills: S.535, H.3896 and H.3897 all of which were approved by the full House ( see House Week in Review, this issue ). H.4359, The Deferred Presentment Services Act, was returned to subcommittee.

### MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

The full Medical, Military, Municipal and Public Affairs Committee gave a favorable report to H.4502. This bill requires outpatient methadone treatment facilities to obtain a Certificate of Need from DHEC prior to constructing a new health care facility or modifying an existing facility and prior to making any significant capital or equipment expenditure.

The Committee passed out H.3033 which also passed the full House (see House Week In Review this issue).

### WAYS AND MEANS

The Ways and Means Committee gave a favorable report with amendment to H.4619. This bill is the implementing legislation for the recent amendment to Article X, Section 16 of the SC *Constitution* authorizing the investment and reinvestment of the funds of various state-operated retirement systems in equity securities. Consistent with requirements of the Constitutional amendment, this bill establishes the State Retirement Systems Investment Panel, consisting of five members, one each appointed by the Governor (this appointee serves as Panel chairman), the State Treasurer, the Comptroller General, and the chairs of the House Ways and Means Committee and the Senate Finance Committee. Also consistent with provisions of the Constitutional amendment, the bill provides for panel members' qualifications, terms of service, duties, and compensation. The bill provides for the authorities of the panel, including a requirement that the panel adopt, in consultation with the State Treasurer, an annual

investment plan for the retirement systems for the next fiscal year. This plan must be approved by the State Budget and Control Board, which must provide the panel with a statement of actuarial assumptions and general investment objectives. The plan, which must include components specified in the bill, must be reviewed by the panel at least once each fiscal year quarter. The bill provides that no more than forty percent of the market value of the assets of a retirement system may be invested in equity securities, and any increase during any fiscal year in the proportion of the market value of the assets of a retirement system invested in equity securities may not exceed twenty percent of the market value of the assets of that system. The bill specifies that the State Treasurer's Office shall provide staff for the panel and provide investment reports at least quarterly during the fiscal year to the Budget and Control Board, the panel, the Speaker of the House, and the President Pro Tempore of the Senate. Also, the State Treasurer is required under the bill to provide an annual report, the contents of which are specified in the bill. The costs of administering and operating the investment programs for the retirement systems must be paid from the investment earnings of these systems. The bill provides guidelines and prohibitions for persons who have authority under the bill to invest, manage, or advise in regard to assets of the retirement systems. The bill also provides that the State Budget and Control Board may invest and reinvest the funds of the system in equity securities of a corporation within the United States that is registered on a national securities exchange as provided in the Securities Exchange Act of 1934, or a successor act, or quoted through the National Association of Securities Dealers Automatic Quotations System, or a similar service.

The committee amended H.4619 by striking language requiring that the annual investment plan include provisions that allocate at least 30% of the dollar volume of equity transactions to persons or firms which are registered or licensed to engage in such investment activities in South Carolina and which have an office in this state. The committee amendment to this provision requires that preference for conducting brokerage transactions be given to brokerage firms domiciled in South Carolina if these firms meet the test of equal service and best execution in the purchase and sale of authorized investments. The committee also struck a provision in the bill which required that methods for managing the costs of the investment activities must be included as a component of the annual investment plan. The committee's amendment to that provision requires that methods for managing costs of the investment activities must be a component of the annual investment plan, and must include a provision that annual costs for equity investing must not exceed one percent of the amount invested in equity securities.

The committee gave a favorable report to H.4621, which requires that the benefits paid under the accidental death benefit pension of the SC Police Officers' Retirement System must be adjusted to reflect increases in the Consumer Price Index in the manner provided under *SC Code of Laws*, Section 9-1-1810 (SC Retirement System).

The committee gave a favorable report with amendment to H.4704, which exempts from the definition of "gross proceeds of sales" (and thereby exempts from sales tax) the sales price of property on sales which are charged off as bad debts or uncollectible accounts for federal income tax purposes. The bill also provides that a taxpayer who pays the tax on the unpaid balance of an account which has been found to be worthless and is charged off for federal income tax purposes may take credit for the tax paid, except that if an amount charged off is



later paid to the taxpayer, the amount paid must be included in the first return filed after the collection and the tax paid. The committee amended the bill by exempting the sales price, *not including sales tax*, of property on sales which are charged off as bad debts or uncollectible accounts for *state* income tax purposes, except that if an amount charged off is later paid to the taxpayer, the amount paid must be included in the first return filed after the collection and the tax paid.

The committee gave a favorable report to H.4672, which exempts from sales tax the sale or resale or the exchange of an interest in a vacation time sharing plan and a vacation multiple ownership interest.

The committee gave a favorable report with amendment to H.4526. This bill provides that, effective on the first day of the first month following approval of the Governor, the admissions license tax does not apply to any amount of the charge for admission that is a fee or tax imposed by a political subdivision of the State. The committee amended the bill by changing the effective date to January 1, 1999.

The committee adopted and reported out as committee bills H.4846 and H.4847. H.4846 is a joint resolution proposing an amendment to the *South Carolina Constitution* providing that property taxes imposed on motor vehicles for motor vehicle property tax years beginning after June, 1999, and on all other personal property for property tax years beginning after 1998, must be separately imposed at a uniform rate on all personal property at a rate that may not exceed the millage rate imposed on such property for any property tax year beginning in 1998 with annual adjustments in the millage rate, if necessary, so that the revenue raised by the tax on personal property does not exceed the revenue raised by the 1998 millage rate.

Effective upon ratification of such a Constitutional amendment, H.4847 establishes in the State Treasury the *Motor Vehicle and Personal Property Tax Relief Trust Fund*. The bill provides that this fund will be administered by the Comptroller General, separate from all other funds, and capitalized annually by an amount equal to 15% of projected year-to-year recurring general fund growth plus the total of all amounts previously credited to the Trust Fund, but not more than the total personal property base payment. The funds are to be used to allocate monthly to each county its state personal property tax reimbursement for revenues not collected because of the percentage reduction on the personal property tax it otherwise would receive. Based on this reimbursement, the county auditor must calculate and prescribe a percentage reduction on each personal property tax billing due in the applicable fiscal year, reducing liabilities in the following order: school operating millage on motor vehicles; school bonded indebtedness and lease purchase payments for school construction and renovation millage on motor vehicles; all other millage on motor vehicles; millage on all personal property other than motor vehicles. When all personal property is wholly exempt, each taxing entity shall receive a monthly reimbursement equal to one-twelfth of its local personal property base payment. The bill provides that property exempted from property tax under the provisions of the bill, is considered taxable property for purposes of bonded indebtedness pursuant to Sections 14 and 15 of the *South Carolina Constitution* and for purposes of computing the "index of taxpaying ability" pursuant to relevant South Carolina law. However, only that assessed value applicable for such property for the 1998 property tax year may be so considered.

## BILLS INTRODUCED IN THE HOUSE

### AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS

#### **S.833 IDENTIFICATION OF PROTECTED MOUNTAIN RIDGE CRESTS** Sen. Peeler

Under the South Carolina Mountain Ridge Protection Act of 1984, the Department of Parks, Recreation and Tourism is responsible for identifying the protected mountain range crests for each county on a map or drawing, describing them in a document, or any combination thereof. This bill transfers these duties to the Department of Natural Resources.

#### **H.4857 JET SKIS PROHIBITED ON PORTIONS OF THE LYNCHES RIVER** Rep. Askins

This bill prohibits the operation of jet skis in any part of the Lynches River that has been designated as a Scenic River. The Department of Natural Resources must mark these portions of the River with signs. Violators are guilty of a misdemeanor and face fines of up to \$200 or imprisonment for up to thirty days.

#### **H.4843 SOUTH CAROLINA MARINE RESOURCES LAW** Rep. Sharpe

This bill rewrites, revises, and amends the laws governing commercial and recreational saltwater fishing. Inadequate, ambiguous, or unenforceable laws are rewritten or eliminated. Provisions that apply only to certain geographical areas are removed. DNR retains jurisdiction over fishing in saltwater and over anadromous resources in freshwater. Matters which DNR must consider in promulgating regulations are expanded. Resident and non-resident individual commercial fisherman licenses and fees are instituted. These licenses allow a fisherman to sell what he catches. Additional changes are proposed dealing with shellfish, anadromous fisheries, recreational harvesting, seafood and market, fishing equipment, and vessels. Violations and penalties are also modified.

### EDUCATION AND PUBLIC WORKS

#### **H.4819 AERONAUTICAL REGULATION BY SC DEPARTMENT OF COMMERCE** Rep. McKay

This bill amends the *Uniform State Aeronautical Regulatory Act* (Title 55, Chapter 5 of the *SC Code of Laws*) so as to make licenses, rules, orders, or regulations promulgated under authority of the chapter applicable to aviation facilities owned or operated by SC state government or by a SC county or municipality.

#### **H.4840 COMPREHENSIVE HEALTH EDUCATION** Rep. Loftis

This bill revises the *Comprehensive Health Education Act* by deleting language concerning "responsible sexual behavior" as a purpose of the act, and adding language stating that the goal of the act is to "reduce the incidence of sexual activity among school age youth and promote virtuous behavior." The bill adds to the Act's definitions of "family life education," "instruction which is intended to develop an understanding of the value of a two-parent family as defined by SC law and the relationship that exists between premarital and extramarital sexual behavior and the breakup of the two-parent family," and also adds a definition of "abstinence." The bill provides that instruction regarding methods of contraception and



regarding sexually transmitted diseases may be offered only with annual written permission from parent or guardian, to students in grades nine through twelve, as a means of "*disease and pregnancy prevention within marriage*." This instruction may not be offered to kindergarten through eighth grade students. Current law prohibits instruction in methods of contraception for students in kindergarten through fifth grade. The bill deletes the local school board's authority to include age-appropriate instruction in reproductive health for grades kindergarten through five. The bill reduces from a minimum of 750 to a maximum of 200, the number of required minutes of reproductive health and pregnancy prevention instruction for students in grades nine through twelve. The bill provides that homosexuality may be discussed only in the context of saying that homosexual behavior and homosexual marriages are not legal in this State. The bill requires that AIDS education or education on sexually transmitted diseases must be presented separately to male and female students. The bill revises current law concerning principals' notification to parents regarding their option to *exempt* their child from this instruction to require that principals notify parents of their option to *include* their children in this instruction. The bill requires that local school boards provide to the State Board of Education a statement of compliance with the provisions of this bill. The bill prohibits public schools from showing actual photographs of partial or total nudity except to show disease. Finally, the bill applies all of the above provisions to all who offer the instruction within a school or under the auspices of a school that receives state funding.

## JUDICIARY

### H.4810 BIRTH CERTIFICATES Rep. Felder

Birth certificates issued to children born out of wedlock must include the name of the father after both parents sign an acknowledgment of paternity. This bill states that if either signatory or both signatories of a voluntary paternity acknowledgment rescinds within sixty days, a new certificate may be prepared only when a determination of paternity is made by a court of competent jurisdiction or an administrative agency.

### H.4811 BAIL BONDSMEN Rep. Scott

This bill requires an accommodation bondsman (one who receives no consideration for acting as a surety) to provide satisfactory evidence of ownership of real property to sufficiently assure that the full principal sum of the bond is realized if the conditions are breached. Current law allows the accommodation bondsman to provide satisfactory evidence of personal or real property.

The bill also states that a surety desiring to be relieved on a bond for good cause or the nonpayment of fees shall file with the court a motion to be relieved. A copy of the motion must be served on the defendant, his attorney, and the solicitor's office. The court then shall schedule a hearing to determine if the surety should be relieved on the bond and advise all parties of the hearing date.

The bill also states that the surety may take the defendant to a detention facility if the circumstances warrant immediate incarceration of the defendant if he is about to or has violated any of the terms of the bail bond. The surety must file immediately with the detention facility and the court an affidavit stating the facts to support the surrender of the defendant for

good cause or the nonpayment of fees. When the affidavit is filed with the court, the surety also must file a motion to be relieved on the bond. After the surety has been relieved by order of the court, a new undertaking must be filed with the appropriate court to secure the re-release of the defendant. The undertaking must contain the same conditions included in the original bond unless the conditions have been changed by the court.

The bill requires the Department of Insurance to establish an education curriculum for bondsman licensure. Before being licensed as a professional or surety bondsman or as a runner, a person must complete at least 20 hours of education and pass a written examination in relevant subjects. A person already licensed is not required to complete the 20 hours, but when renewing his license he must comply with the continuing education requirements (6 hours of education courses). A professional or surety bondsman must pay an annual \$100 fee to the clerk of court of his home county and an annual \$50 dollar fee to any other county where he is doing business.

Each professional or surety bondsman must maintain security deposits with the clerk of court where his primary place of business is located equal to at least one-fourth of the amount of all bonds in the state on which he is liable. The bill states that a minimum of \$10,000 of collateral must be cash deposited with the clerk of court or certificates of deposit pledged to the clerk of court. Any remaining collateral must be pledges of real estate which are free and clear of any encumbrances.

A person who violates any of these provisions concerning bail bondsmen is guilty of a misdemeanor. The bill provides that, upon conviction, the violator must be fined \$500 and/or imprisoned for up to 30 days.

**H.4813 DEFINITION OF A CHILD** Rep. Cobb-Hunter

In the Children's Code (Section 20-7-10 *et seq.*), a child is defined as a person under the age of 18. This bill states that a child is a person under the age of 18 who has been born.

**H.4814 FIREWORKS** Rep. Kelley

This bill authorizes counties to enact an ordinance to regulate or prohibit the discharge of otherwise lawful fireworks. The ordinance may be made to apply only to those parts of the county where because of population density or contiguity to municipalities the public safety requires such regulation.

**H.4820 TRAFFIC TICKETS** Rep. Davenport

Under the provisions of this bill, the Department of Public Safety is prohibited from officially or unofficially requiring a highway patrolman to issue a specific number of traffic tickets each year. Any highway patrolman and his superior officers who complies with an order that violates this provision must be suspended permanently from their duties.

**H.4821 CRIMINAL OFFENSES AGAINST PUBLIC POLICY** Rep. Jennings

This bill prohibits the impersonation of a state or local official or employee or a law enforcement officer in connection with a sham legal process, or the false assertion of authority of state law in connection with a sham legal process. A person may not act without authority under state law as a judge or other authorized official in determining a controversy,



adjudicating the rights or interests of others, or signing a document as though authorized by state law. Violators would be guilty of a misdemeanor and, upon conviction, must be fined up to \$500 and/or imprisoned up to one year.

The bill also prohibits a person from falsely asserting authority of law, in an attempt to intimidate or hinder a state or local official or employee or law enforcement officer in the discharge of official duties, by means of threats, harassment, physical abuse, or use of sham legal process. Violators would be guilty of a felony and, upon conviction, must be fined not more than \$10,000 and/or imprisoned from 1 to 3 years.

**H.4824 REFERENDUM QUESTIONS Rep. Inabinett**

This bill concerns referendum questions that may be confusing to the electorate. Under the provisions of the legislation, when a countywide or less than countywide referendum is held, the electoral board charged with conducting the referendum must make the ballot question available to the news media in the county at least 45 days in advance of the date of the referendum. If the electoral board determines that a referendum question that might not be clearly understood by the voters, it may prepare a simplified or, when appropriate, more detailed explanation of the question that must be placed on the ballot along with the referendum question. When mechanical devices for voting are used, printed copies of the explanation must be made available at each voting precinct.

The bill also provides that when a statewide referendum question is submitted to the electorate and the referendum question is of a nature that it might not be clearly understood by the voters, a simplified or, when appropriate, more detailed explanation of the meaning and effect of the referendum question must be placed on the ballot along with the referendum question.

**H.4830 REPAIR AND MAINTENANCE OF PROPERTY Rep. Harrison**

This bill concerns an owner or lessee of real property seeking to improve, repair, or maintain his property so situated that it is impossible to perform the repairs without entering the premises of an adjoining property. Under the provisions of the bill, if permission to enter the adjoining property has been denied, or unreasonable conditions have been placed upon the entry, the owner or lessee seeking to make the improvements, repairs, or maintenance may petition the circuit court for a license to enter the adjoining property for the purpose of performing the improvements, repairs or maintenance. The petition may not be filed until after a good faith effort to obtain permission to enter the adjoining property has been made. The license may be granted if the court finds that the entry upon the adjoining property does not irreparably or unreasonably damage the adjoining property; the grant of license is not an unreasonable encroachment or burden upon the adjoining property; and the license is reasonably necessary for the improvement or preservation of the petitioner's property.

If the court grants the license, it must specify the nature of the improvements, repairs, or maintenance to be accomplished, and the manner in which they will be made. The court may include any other terms and conditions considered appropriate to minimize disruption to the adjoining owner or lessee's use and enjoyment of his property. The licensee must in all respects restore the adjoining land to its condition prior to entry and is liable for actual damages occurring as a result of the entry. The court may require that an appropriate bond or other security be posted by the licensee and must require the licensee to provide adequate

liability and workers' compensation insurance to indemnify the adjoining property owner and lessee against claims arising from the work authorized by the license.

**S.974 WITNESSES VIEWING AN EXECUTION Sen. Thomas**

Current law provides that counsel for the convict and a minister of the gospel may be present at the convict's execution. This bill would give the convict the option of substituting one person for either his counsel or the minister, or a person for his counsel and a person for the minister.

**H.4833 OPERATION OF A MOTOR VEHICLE WITHOUT A LICENSE Rep. Altman**

Under the provisions of this bill, a person owning or controlling a motor vehicle may not allow another person to operate the motor vehicle upon the state's public highways when he knew or should have known that the person allowed to operate the motor vehicle did not have a valid South Carolina driver's license. Violators would be guilty of a misdemeanor and, upon conviction, must be fined \$500 and sentenced to not less than 30 days in prison. The fine may not be suspended. If serious injury or death results from the operation of the motor vehicle, the person owning or controlling the vehicle must be fined \$3000 and imprisoned from 1 to 3 years. The fine may not be suspended. The motor vehicle must be confiscated by the local government within 45 days after the offense occurred and sold at a public auction. The proceeds from the sale must be placed in the local government's general fund.

**H.4834 IMPAIRED OPERATION OF A MOTOR VEHICLE Rep. Altman**

This bill concerns a person who owns or controls a motor vehicle and allows another person to operate it when he knows or should have known that the person was impaired through the use of alcohol or drugs or reasonably is known to the person owning or controlling the motor vehicle to be a habitual user of drugs or alcohol. The person who allows the use of the vehicle is guilty of a misdemeanor and, upon conviction, must be fined \$1000 and sentenced to at least 6 months in prison. The sentence must not be suspended. If serious bodily injury or death results from the operation of the motor vehicle, then the person owning or controlling the motor vehicle must be fined \$5000 and sentenced from 2 to 5 years in prison. The sentence must not be suspended. The motor vehicle must be confiscated by the local government within 45 days of the offense and sold at a public auction or destroyed. If the motor vehicle is sold, the local government that confiscated the motor vehicle must place the proceeds from the sale in its general fund.

**H.4835 DRIVER'S LICENSE CHECKPOINTS Rep. Davenport**

This bill provides that law enforcement officers may establish driver's license or motor vehicle registration checkpoints only at safe locations and not during rush hour periods.

**H.4838 ALIENATION OF AFFECTION Rep. Neilson**

This bill creates a cause of action for alienation of affection. A person seeking to recover damages for alienation of affection must allege and prove that he or she is married to the party involved with the defendant; wrongful conduct occurred between the defendant and the spouse during the marriage; the plaintiff suffered loss of affection or consortium of the spouse; and a causal connection exists between the defendant's conduct and the plaintiff's loss. An action for alienation of affection must be commenced within three years of the date of accrual of the cause of action. No cause of action for alienation of affection may be maintained by a



person who has entered into an agreement for separate maintenance containing an express waiver of this right.

**H.4855 CHURCH RELATED ACTIVITIES IN A RESIDENCE Rep. Haskins**

This bill states that no zoning ordinance of a municipality or county may prohibit church related activities in a single family residence. The bill further provides that church related activities do not include regularly scheduled worship services.

**LABOR, COMMERCE AND INDUSTRY**

**H.4836 OUTDOOR ADVERTISING Rep. Tripp**

This bill establishes construction specifications for outdoor advertising signs of various sizes. The bill provides that the state and its political subdivisions shall not remove a legally placed off-premises outdoor advertising without paying compensation to the owner based upon approved appraisal and the amount of which is mutually agreed upon by the parties. Governmental entities and owners of outdoor advertising are encouraged to enter into relocation agreements in lieu of compensation arrangements.

**H.4829 WORKERS' COMPENSATION FOR LAW ENFORCEMENT OFFICERS Rep. Quinn**

This bill includes law enforcement officers in a Workers' Compensation provision under which it is presumed that heart or respiratory diseases occurring in firefighters arose in the course of their employment.

**S.993 ASSISTIVE TECHNOLOGY WARRANTY ACT Sen. Lander**

This bill provides for the manner in which assistive technology devices (wheelchairs, prosthetics, hearing aids, voice synthesizers, braille printers, etc.) shall be marketed, repaired maintained, and replaced, if required. The bill provides that a manufacturer who, directly or indirectly, sells an assistive technology device must furnish the consumer with a written warranty that is at least one year in duration, and which, at minimum, guarantees that there are no defects in parts or performance. In the absence of an express written warranty, the assistive technology device shall be considered to have been expressly warranted by the manufacturer just as if the manufacturer had explicitly furnished the warranty as specified in the legislation.

**S.982 TERMINAL RENTAL ADJUSTMENT CLAUSE IN A VEHICLE LEASE Sen. Giese**

This bill provides that a transaction involving a motor vehicle or trailer does not create a sale or security interest merely because the agreement contains a terminal rental adjustment clause which provides that the rental price may be or must be adjusted either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

**S.1079 INSURANCE COVERAGE OF RECONSTRUCTIVE BREAST SURGERY Sen. Short**

This bill provides that an insurer which provides coverage for mastectomy surgery must provide coverage for surgical reconstruction of the breast on which surgery has been performed and surgical reconstruction for the other breast so as to arrive at a symmetrical appearance.

## MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

### **S.963 CERTIFICATE OF NEED PROCESS Sen. J. Verne Smith**

Health care facilities must apply for a Certificate of Need from the Department of Health and Environmental Control (DHEC) before constructing a new facility or modifying an existing facility and before any expenditure or acquisition is made on behalf of a health care facility in excess of amounts prescribed by DHEC regulations. This bill amends the statutory definition of a health care facility to exclude kidney disease treatment centers and free-standing hemodialysis centers from the Certificate of Need process. The bill also subjects methadone treatment clinics to the Certificate of Need process after the Department of Labor, Licensing and Regulations (LLR) promulgates licensure standards for these facilities. The bill creates a study group to revise and propose licensure standards for methadone clinics. Methadone clinics licensed prior to January 1, 1997 are not required to obtain a Certificate of Need.

### **S.920 ORGAN, TISSUE, AND EYE DONATIONS Sen. Lander**

This bill deletes, revises, and rewrites several provisions relating to organ donations. The Commission on Organ, Tissue, and Eye Donation is created to ensure that hospitals comply with federal and state laws concerning notification of the Donor Referral Network of potential organ, tissue, and eye donors. The bill amends the manner in which a body or body parts may be donated by adding a provision which waives family consent to a donation if sufficient documentation such as a driver's license, living will, power of attorney, or other document has been executed by the donor. The bill designates specific organizations to receive potential organ and tissue donor referrals and donations. A provision is added that requires law enforcement officers, coroners, and emergency personnel responding to the scene of an accident or trauma to take reasonable steps to ensure that any evidence acknowledging that a person is a donor accompany that person to the hospital. The bill prohibits the South Carolina Donor Referral Network and agencies in the Donor Referral Network from assessing a fee against another procurement agency for a donor referral.

### **S.921 ORGAN PROCUREMENT ORGANIZATIONS Sen. Lander**

This bill amends the Uniform Anatomical Gift Act, which provides for organ donations made for transplantation purposes. The bill defines an organ procurement organization as the agency or organization designated by the Health Care Financing Administration as the organ procurement agency for the State. The bill states that if an organ donor does not name a specific donee, the organ must be donated to the state organ procurement organization.

The bill allows the organ procurement organization to enter into reciprocal agreements to share organs with qualified organ procurement organizations in other states. The proposed agreement must be approved by the United Network for Organ Sharing or its successor. Unless otherwise provided for by a reciprocal agreement, the organ procurement organization may transfer an organ to an out-of-state recipient for transplantation once if a suitable recipient in South Carolina cannot be found in a reasonable amount of time.

### **H.4839 RESIDENT-STAFF RATIOS FOR NURSING HOMES Rep. Neilson**

This bill sets mandatory patient-staff ratios in nursing homes as a condition of licensure. Between the hours of 7:00 a.m. and 3:00 p.m., nursing homes must have at least one staff member for every nine patients. Between the hours of 3:00 p.m. and 11:00 p.m., nursing



homes must have at least one staff member for every thirteen patients. Between the hours of 11:00 p.m. and 7:00 a.m., nursing homes must have at least one staff member for every twenty-two patients. In facilities that utilize two twelve-hour shifts, the staffing ratios for the 7:00 a.m. to 3:00 p.m. apply to the day shift and the ratios for the 11:00 p.m. to 7:00 a.m. apply to the night shift.

**S.936 MORTUARY SCIENCE COLLEGE STUDENTS Sen. J. Verne Smith**

This bill authorizes a permit to allow students who register with the South Carolina State Board of Funeral Service to engage in the practice of funeral service (1) if the student is enrolled in an accredited mortuary science college or a program seeking accreditation in South Carolina, (2) if the activities are in conjunction with the student's academic training, and (3) if the funeral services are supervised by a licensee designated by an accredited mortuary science college in South Carolina. The South Carolina State Board of Funeral Services must promulgate regulations to implement these provisions.

**S.1025 CONFINEMENT FOR PRISONERS Sen. Anderson**

This bill requires the Department of Corrections to confine prisoners to institutions closer to the prisoner's home if the department determines that such placement does not jeopardize security.

**WAYS AND MEANS**

**H.4822 TAX LIENS Rep. Jennings**

This bill provides that if a person liable to pay a tax does not pay it after demand, the amount of the tax, including interest, additional tax, addition to tax, or assessable penalty plus accrued costs, is a lien in favor of the Department of Revenue (DOR) on all property and rights to property, real or personal, belonging to the person. This lien, referred to as a "*tax lien*," is effective on the date of the assessment of the tax and continues for ten years from the date of filing. The bill allows an authorized agent of the DOR to seize, levy on, and sell the property of the person for payment of the amount due, with added penalties, interest, and costs, and to pay the money collected to the DOR. Current statutory provisions include allowing for issuance of a *warrant of distraint* if taxes are not paid *ten days* after they are due and payable, and include a provision that the amount of the warrant is not a lien on the title to and interest in the property of the taxpayer against whom it is issued, *until it is filed* and entered in the judgement docket. The bill also adds a new section to the *SC Code of Laws*, providing requirements for validating tax liens in varying circumstances.

**H.4823 REGIONAL TRANSPORTATION AUTHORITY Rep. Townsend**

This bill provides additional/alternative sources for raising local funds to support the operation of a regional transportation authority. These additional sources include a sales tax on gasoline, tax per gallon of gasoline sold, or general sales tax. The bill also makes a technical correction to the *SC Code of Laws* regarding members of a regional transportation authority.

**H.4825 DEFINITIONS FOR PURPOSES OF STATE RETIREMENT SYSTEM Rep. Wilder**

This bill includes in the definition of "*Employee*," for purposes of the SC Retirement System, a student enrolled in and employed by any college, university, or educational institution of higher learning supported by and under the control of the State of South Carolina.

**H.4828 ACCRUED ANNUAL LEAVE OF A STATE EMPLOYEE Rep. Wilder**

This bill adds a provision for a lump-sum payment for unused leave, not to exceed 45 days and without regard to the earned leave taken during the calendar year in which the employee is terminated, to a state employee who is terminated due to a reduction in force.

**S.837 DEFINED MINIMUM PROGRAM Sen. Lander**

This bill repeals Section 59-26-70 of the *SC Code of Laws*, which provides that the State Department of Education may allow adjustments in the amount of instructional time required in each of the subjects in the State's defined minimum program. The section also prohibits any commission or agency of the State from requiring any South Carolina public high school to require foreign language as a prerequisite to receiving a high school diploma.

**S.958 STATE-OPERATED RETIREMENT SYSTEMS Sen. Drummond**

This bill is the Senate's implementing legislation for the 1996 amendment (ratified in 1997) to Article X, Section 16 of the *SC Constitution*, authorizing the investment and reinvestment of the funds of various state-operated retirement systems in equity securities. The House Ways and Means Committee amended and reported out **H.4619** (see *Ways and Means*, under "*House Committee Action*"), which is another version of implementing legislation for this Constitutional amendment. **S.958** provides that the State Budget and Control Board (the Board), as trustee of the retirement system, shall invest and reinvest the assets of the retirement systems as provided under current law, and the State Treasurer shall serve as agent of the Board with respect to investments made pursuant to Article 7, Chapter 9, Title 11 (the "Sinking Fund of the State"). The bill empowers the trustee to delegate to an agent all functions other than final authority to invest. The bill specifies how a trustee or other fiduciary must discharge duties and how the trustee must invest and manage assets of a retirement system. The bill requires that the trustee adopt a statement of investment objectives and policies for the retirement system, and specifies items that must be included in the statement, which must be reviewed and changed or reaffirmed annually. The bill provides for liability and for remedy in the event of breach of duty by the trustee or other fiduciary. The bill creates and provides terms, powers, and duties for, a five member State Retirement Systems Investment Panel (one each appointed by the Governor, State Treasurer, Comptroller General, Chair of Ways and Means, and Chair of Senate Finance), which is established "for the purpose of providing outside advice to the board with respect to its investment plan." The bill requires that, after the board has received the advice of the panel, the board shall adopt an annual investment plan, which must be implemented by the board. The bill also amends the Freedom of Information Act so as to provide an exemption from disclosure for the State Budget and Control Board, while meeting as the trustee of the State Retirement System, if the meeting is in executive session specifically pursuant to particular matters specified in the bill.

**H.4848 TAXATION Rep. Boan**

This bill adds a section to the *SC Code of Laws*, allowing a specified extension of time to an innocent taxpayer for payment of an amount due, and allowing the Department of Revenue (DOR) to require that the taxpayer furnish a bond. The bill also places frivolous or groundless claims with the administrative law judges rather than with the circuit courts. The bill also provides that any person convicted of assisting in the preparation of a fraudulent return is guilty of a felony and is prohibited from assisting in the preparation of any return (such assistance is also a felony under the bill). The bill also increases from 30 days to 90 days (after



final determination is received from the Internal Revenue Service) the notification period that a corporation is required to provide to the DOR when the taxable income is changed by the Internal Revenue Service. The bill also provides that, when outside contractors are collecting delinquent taxes for the DOR, the contractors may collect on a package of notices in total.

**H.4849 TAXATION (CIGARETTES, TOBACCO, ETC.) Rep. Boan**

This bill adds a section to the *SC Code of Laws* regarding taxes on tobacco, ammunition, and playing cards. The bill provides due dates for payment of these taxes, specifies reporting requirements for persons liable for these taxes, and requires that sales invoices of resident or nonresident persons liable for these taxes must indicate payment of the tax on cigarettes or other tobacco products with the wording "*South Carolina Tax Paid.*" The bill also adds retail tobacco businesses to those entities required to file with the Department of Revenue (DOR) an application for a license to engage in such a business. The bill also changes the word "distributor" to "person" in the section of the *SC Code of Laws* concerning payment of license tax on cigarettes by reporting method rather than by tax stamps so as to clarify who owes the taxes, and so as to clarify liability for filing returns and paying taxes.

**H.4850 TAXATION Rep. Boan**

This bill amends Section 12-8-570 of the *SC Code of Laws*, regarding withholding by trust or estate from distribution to a nonresident beneficiary, by providing that this section does not apply to a nonresident beneficiary who is exempt from taxation under the Internal Revenue Code Section 501 or a nonresident beneficiary who agrees to be subject to the jurisdiction of the Department of Revenue and the courts of South Carolina to determine South Carolina tax liability. The bill provides that the agreement is not an admission of tax liability. The bill also amends current law concerning an incorrect withholding exemption certificate, notification of rate of withholding, and appeal of determination. The bill also increases from \$500 to \$1,000 the fine for wilfully supplying to an employer false information or wilfully failing to supply certain information which would require an increase in income tax to be withheld, and provides that offenses in this section are triable in magistrate's court. The bill provides that an individual required to supply information to his employer under Chapter 8 of Title 12 (Income Tax Withholding) of the *SC Code of Laws* who supplies a withholding exemption certificate which exceeds the number to which he is entitled, is liable for a penalty of at least \$50 for each exemption claimed that exceeds the number to which he is entitled, with no maximum penalty provided. Current law caps this penalty at \$1,000.

**H.4851 TAXATION Rep. Boan**

This bill provides that the expenses for witnesses appearing before the Department of Revenue (DOR) must come from income taxes rather than from the particular tax involved in the proceeding. The bill also lists entities from whom acceptable proof to qualify for water impoundment credit can be obtained. The bill also provides a due date for filing corporate returns for foreign corporations that do not have offices in the United States. The bill also requires those sellers subject to use tax to obtain a retail license. The bill also clarifies the expenditure of the one-time fee on trailers and semi-trailers. The bill requires that interest on refunds to taxpayers must be drawn from the tax type being refunded or credited. The bill also provides, in the case of an underpayment of declaration of estimated tax, a minimum requirement of \$500 before declaration penalties would apply. The bill clarifies that the State Treasurer must reduce the remittance back to counties related to solid waste fees on tires by

any credits, refunds, or discounts previously allowed. Other provisions of this bill update to new terminology, make technical corrections, and correct inconsistencies.

**H.4852 TAXATION** Rep. Boan

This bill allows the local option sales tax credit for entities locating within a multi-county business or industrial park and allows a prorated credit for any entities negotiating a fee-in-lieu of property taxes. The bill requires the Department of Revenue to correct any city or county code errors related to the local option sales tax on a prospective basis. The bill also includes municipalities, school districts, water and sewer authorities, or other political subdivisions along with counties in the statutory requirement regarding lease agreements containing provisions for fee-in-lieu-of-taxes.

**H.4853 TAXATION** Rep. Boan

This bill clarifies the percentage of exemption allowed for motor fuel purchased for travel on the highway and for operation of equipment. The bill also clarifies what is considered to be "power take-off equipment" for purposes of exemption from tax on motor fuel. The bill adds provisions that kerosene used as heating oil or used in equipment not licensed as a motor vehicle qualifies for the exemption from tax on motor fuel, as does taxable motor fuel used in "transportation of students for state-funded institutions of higher learning." The bill also makes technical corrections and repeals provisions of the SC Code of Laws that are no longer applicable relating to temporary permits and registration cards for motor carriers.

**H.4854 TAXATION** Rep. Boan

This bill allows a county treasurer to waive, dismiss, or reduce a penalty levied against real or personal property, but does not allow the treasurer to waive, dismiss, or reduce interest on the penalty. The bill also adds provisions to the SC Code of Laws, providing that if the person charged with collection of *ad valorem* property taxes on real or personal property for a county determines that the tax, assessment, or penalty is uncollectible, he shall record that determination and the reason for it on a list he maintains. The bill also provides requirements and procedures relevant to this property tax list. The bill deletes a current provision (regarding homestead exemption from property taxes) which provides that in the year of reassessment the millage rate for all real and personal property must not exceed the rollback millage, except that the rollback millage may be increased by the percentage increase in the consumer price index for the year immediately preceding the year of reassessment. The bill adds a provision (regarding property classification and assessment) that to qualify for the 4% assessment ratio, the owner-occupant of a legal residence that is being purchased under a contract for sale or a bond for title must record the contract for sale or the bond for title in the office of the register of mesne conveyances or the clerk of court in those counties where the office of the register of mesne conveyances has been abolished. The bill provides that for property tax purposes, the "assessment of the tax" occurs on the later of the last day the tax may be paid without penalty or the date of the tax notice. The bill also provides that, regarding a taxpayer's written request to meet with the assessor, if the assessor agrees with the taxpayer's written objection, the county assessor must correct the error. The bill amends the process of appeal of an assessment by adding a provision imposing a rate of interest of one-half of one percent for each month or portion of a month.



## Legislative Update, March 24, 1998

The bill also provides that a property taxpayer may make certain written objections, and request in writing to meet with the auditor, at any time on or before the later of 30 days after the tax notice is mailed, or the last day the tax levied upon the assessment must be paid. Current law requires that this written request must be made at any time on or before the last day the tax levied upon the assessment can be timely paid.

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The *Legislative Update* is on the Worldwide Web. Visit the South Carolina General Assembly Home Page ([www.lpitr.state.sc.us](http://www.lpitr.state.sc.us)) and click on the "Quick Find Guide." On the next screen, click on "Legislative Updates." This will list all of the *Legislative Updates* by date. Click on the date you need.

SPECIAL NOTE: A cumulative index to the weekly issues of the *Legislative Update* has been added to the *Legislative Update* page on the Worldwide Web. Bills are listed in numerical order in this index. Each bill number is followed by a list of hypertext links (in chronological order) to every reference to that bill in any issue of the *Legislative Update* during the current session, 1997-98. This is an easy way (just click on the links) to find summaries of bills introduced into the House and to follow the progress of a bill through House committees and on the floors of the House and Senate.